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One Hundred Eleventh Congress
U.S. House of Representatives
Committee on Homeland Security
Washington, DC 20515

December 6, 2010

The Honorable John S. Pistole
Administrator
Transportation Security Administration
601 S. 12th Street
Arlington, VA 20528

Dear Administrator Pistole:

It is my understanding that you are in the process of reviewing the current policy prohibiting Transportation Security Officers (TSO) from engaging in collective bargaining activities. I urge you to reverse the policy.

Under the Aviation and Transportation Security Act (P.L. 107-71), Congress granted the Transportation Security Administration's (TSA) Administrator broad authority to establish conditions of employment and decide whether and how to conduct collective bargaining.[1] In the rush to establish an important security agency that would serve as the frontline against another terrorist attack, Congress granted an unusual amount of flexibility to TSA's Administrator to determine the terms and conditions governing employment within TSA.

Yet, instead of using the flexibility contained in the act to create an agency with personnel practices and protections considered a model for public service in the Federal national security arena, the previous administration simply issued a blanket prohibition preventing collective bargaining without legal rationale or factual support. In 2003, the Bush Administration issued a memorandum that stated in relevant part:

> "individuals carrying out the security screening function under section 44901 of Title 49, United States Code, in light of their critical national security responsibilities, shall not, as a term or condition of their employment, be entitled to engage in collective bargaining or be represented for the purpose of engaging in such bargaining by any representative or organization".[2]

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[1] 49 U.S.C. § 44935

[2] TSA Under Secretary Admiral James Loy issued a memorandum on January 8, 2003, declaring that Transportation Security Officers had no right to have an exclusive

While some might say that the directive containing the blanket prohibition was an abuse of the discretion granted in the law and may have been ideologically driven, it is undeniable that this prohibition can lead to curious outcomes. For instance, under this directive, security screeners who are employed by private sector employers contracting with TSA to provide security screening services may be able to engage in collective bargaining activity—an opportunity denied their colleagues who may be employed by the Federal government. Also, given the wording of the directive, it could be argued that a TSO employed by the Federal government may be able to join an organization that engages in collective bargaining, but may not be represented by that organization for any collective bargaining activities. Recently, the Federal Labor Relations Authority (FLRA) issued a decision allowing TSOs to choose a representative union.[3]

In the seven years since the issuance of Admiral Loy's 2003 Memorandum, TSA and the TSOs have made marked improvements. However, TSOs continue to suffer from attrition and workplace injury rates that exceed the norm for employees in the Federal sector. Additionally, for several years, the Partnership for Public Service has surveyed Federal workers who consistently rank TSA near the bottom of its survey of Best Places to Work in the Federal Government. In 2010, TSA ranked 220th out of 224 agencies surveyed. Strikingly, TSA ranked last or near last in categories measuring Fairness of Leadership; Performance Based Rewards and Advancement; Family Friendly Culture and Benefits; and Pay. Clearly, a denial of collective bargaining rights has not brought about an optimal workplace environment.

Also obvious, is that the existence of collective bargaining rights among other employees with "critical national security responsibilities" has not diminished performance. I think we would be hard pressed to find fault with the performance of individuals employed by Customs and Border Protection (CBP). The presence of a union has not impeded the frontline employees of CBP from carrying out the agency's mission. Further, the ability of these employees to engage with a union has not jeopardized the nation's safety or been a source of conflict. By way of contrast, CBP ranks 146th out of 224 agencies in the Best Places to Work survey—significantly outranking TSA in every category.

In essence, it is clear that there is no factual basis to believe that the performance of CBP employees with critical national security responsibilities has been adversely impacted by their ability to seek union membership. Additionally, there is no factual basis to believe that the existence of a union has compromised CBP's mission. Thus, it cannot be assumed that collective bargaining would have an adverse impact on TSOs. In fact, given the maturity of TSA, granting this new ability to its frontline employees may serve to improve workplace dynamics and bring about a new esprit de corps that yields intangible benefits for the individual and the organization.

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bargaining representative negotiate on their behalf in the interest of national security.

[3] 65 FLRA No. 53 (November 2010).

I urge you to issue a policy that expands the ability of TSO's to engage in meaningful representational activities and assures collective bargaining rights and I look forward to working with you to develop such a system.

If you have any questions or concerns, please contact Cherri Branson, Chief Oversight Counsel, Committee on Homeland Security at 202-226-2616.

Sincerely,

Bennie G. Thompson
Chairman
Committee on Homeland Security